

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE MAY 8, 2012

AMENDED IN SENATE APRIL 23, 2012

SENATE BILL

No. 1191

Introduced by Senator Simitian
(Coauthor: Assembly Member Hall)

February 22, 2012

An act to add *and repeal* Section ~~2924.9~~ to 2924.85 of the Civil Code, relating to landlord-tenant relations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1191, as amended, Simitian. Landlord-tenant relations: disclosure of notice of default.

Existing law generally regulates the hiring of real property, including, among other things, specifying certain obligations imposed on landlords and obligations imposed on tenants. Existing law, until January 1, 2013, requires a tenant of property upon which a notice of sale has been posted to be provided a specified notice advising the tenant that, among other things, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 60-day eviction notice, and that other laws may prohibit the eviction or provide the tenant with a longer notice before eviction.

This bill would, *until January 1, 2018*, require every landlord who ~~is in default under a mortgage or deed of trust secured by a single-family dwelling, or a multifamily dwelling not exceeding 4 units, offers for rent a single-family dwelling, or a multifamily dwelling not exceeding 4 units~~, and who has received a notice of default ~~from the mortgagee~~,

~~trustee, or other person authorized to take the foreclosure sale that has not been rescinded with respect to a mortgage or deed of trust secured by that property to disclose the notice of default in writing to any prospective tenant prior to executing a lease agreement for the property. The bill would also provide that a violation of those provisions would allow the tenant to void the lease and entitle the tenant to recovery of twice the monthly rent or twice the amount of actual damages from the landlord, and all prepaid rent, if the tenant voids the lease and vacates the property in addition to any other remedies that are available. The bill would also provide that if the tenant elects not to void the lease and the foreclosure sale has not yet occurred, the tenant may deduct a total amount equal to two 2 months' rent from future rent obligations owed the landlord who received the notice of default. The bill would specify the content of the written disclosure notice, and would require the notice to be provided in English and other languages, as specified. The bill would exempt a property manager from liability for failing to provide the written disclosure notice unless the landlord notified the property manager of the notice of default and directed him or her in writing to deliver the written disclosure.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2924.85 is added to the Civil Code, to
- 2 read:
- 3 2924.85. (a) Every landlord who offers for rent a single-family
- 4 dwelling, or a multifamily dwelling not exceeding four units, and
- 5 who has received a notice of default that has not been rescinded
- 6 with respect to a mortgage or deed of trust secured by that property
- 7 shall disclose the notice of default in writing to any prospective
- 8 tenant prior to executing a lease agreement for the property subject
- 9 to the notice.
- 10 (b) A violation of subdivision (a) shall void the lease at the
- 11 election of the tenant and shall entitle the tenant to recovery of
- 12 twice the monthly rent or twice the actual damages, whichever is
- 13 greater, and all prepaid rent from the landlord who received the
- 14 notice of default, in addition to any other remedy that the law may
- 15 provide.

1 (c) *In lieu of the remedies in subdivision (b), if the tenant elects*
2 *not to terminate the lease and the foreclosure sale has not*
3 *occurred, the tenant may elect to deduct a total amount equal to*
4 *two months' rent from future rent obligations owed the landlord*
5 *who received the notice of default.*

6 (d) *The written disclosure notice required by subdivision (a)*
7 *shall be provided in English and the languages described in Section*
8 *1632 substantially in the following form:*

9
10 *The foreclosure process has begun on this property, and this*
11 *property may be sold at foreclosure. If you rent this property, and*
12 *a foreclosure sale occurs, the sale may affect your right to continue*
13 *to live in this property in the future. Your tenancy may continue*
14 *after the sale. The new owner must honor the lease unless the new*
15 *owner will occupy the property as a primary residence, or in other*
16 *limited circumstances. Also, in some cases and in some cities with*
17 *a "just cause for eviction" law, you may not have to move at all.*
18 *In order for the new owner to evict you, the new owner must*
19 *provide you with at least 90 days' written eviction notice in most*
20 *cases.*

21
22 (e) *A property manager shall not be liable under this section*
23 *for failure to provide the written disclosure notice in subdivision*
24 *(d) unless the landlord has notified the property manager of the*
25 *notice of default and directed him or her in writing to deliver the*
26 *written disclosure, in which case the property manager shall be*
27 *liable to the extent specified in subdivision (b). This subdivision*
28 *shall not preclude a landlord from being held liable when a tenant*
29 *does not receive the written disclosure notice in subdivision (d).*

30 (f) *The rights and remedies provided by this section are in*
31 *addition to and independent of any other rights and remedies under*
32 *any other law. Nothing in this section shall be construed to alter,*
33 *limit, or negate any other rights and remedies.*

34 (g) *This section shall remain in effect only until January 1, 2018,*
35 *and as of that date is repealed, unless a later enacted statute, that*
36 *is enacted before January 1, 2018, deletes or extends that date.*

37 ~~SECTION 1. Section 2924.9 is added to the Civil Code, to~~
38 ~~read:~~

39 ~~2924.9. (a) Every landlord who is in default under a mortgage~~
40 ~~or deed of trust secured by a single-family dwelling, or a~~

1 multifamily dwelling not exceeding four units, and who has
2 received a notice of default from the mortgagee, trustee, or other
3 person authorized to take the foreclosure sale shall disclose the
4 notice of default in writing to any prospective tenant prior to
5 executing a lease agreement for the property subject to the notice.

6 (b) ~~A violation of subdivision (a) shall void the lease at the~~
7 ~~election of the tenant and shall entitle the tenant to recovery of~~
8 ~~twice the monthly rent or twice the actual damages, whichever is~~
9 ~~greater, and all prepaid rent from the landlord who received the~~
10 ~~notice of default, in addition to any other remedy that the law may~~
11 ~~provide.~~

12 (c) ~~In lieu of the remedies in subdivision (b), if the tenant elects~~
13 ~~not to terminate the lease and the foreclosure sale has not occurred,~~
14 ~~the tenant may elect to deduct a total amount equal to two months'~~
15 ~~rent from future rent obligations owed the landlord who received~~
16 ~~the notice of default.~~

17 (d) ~~The written disclosure notice required by subdivision (a)~~
18 ~~shall be substantially in the following form:~~

19
20 ~~The foreclosure process has begun on this property, and this~~
21 ~~property may be sold at foreclosure. If you rent this property, and~~
22 ~~a foreclosure sale occurs, the sale may affect your right to continue~~
23 ~~to live in this property in the future. Your tenancy may continue~~
24 ~~after the sale. In order for the new owner to evict you, the new~~
25 ~~owner must provide you with at least 60 days' written eviction~~
26 ~~notice or 90 days if required by any other provision of state or~~
27 ~~federal law. However, some laws may prohibit eviction.~~